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In The

Supreme Court of the United States

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United States of America

In re Leon Braun

Petitioner

v.

Seminole Tribe of Florida Inc.,
and Seminole Tribe of Florida

Respondent

------*------

PETITION FOR A WRIT OF MANDAMUS ON THE UNITED STATES COURT OF APPEALS, ELEVENTH CIRCUIT

------*------

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Counsel of Record
Counsel for Petitioner

Dated: January 8, 2001

54 pp

QUESTIONS PRESENTED

1. Whether mandamus should issue to the United States Court of Appeals for the Eleventh Circuit compelling that court to reverse themselves on their decision barring the U.S. Government with Relator, Leon Braun , from bringing a qui tam action, under The False Claims Act, ("FCA"), 31 U.S.C. §§ 3729-30 et-seq, against the Defendants, Seminole Tribe of Florida and Seminole Tribe of Florida, Inc. as a result of the Indians asserting that the Federal Court lacks jurisdiction because of the Doctrine of Indian Sovereign immunity?

2. Does the U.S. Government abrogate the rights of the Seminole Tribe of Florida to invoke the purported doctrine of Sovereign Immunity when relating to violation of Federal Law pursuant to 25 CFR, Indians, Chapter 3, Subchapter II- § 81. Contracts and agreements with Indian tribes, which provides an express waiver of the right of the Indian tribe to assert sovereign immunity as a defense in a federal action brought against the Indian tribe?

3. Does the Seminole Tribe of Florida specifically abrogate its purported claim of Sovereign Immunity as related to violations of Federal law pursuant to its own Constitution of the Seminole Tribe of Florida, Ratified August 21, 1957 ----Article V, wherein The Seminoles Tribe agrees to abide by the United States Constitution and its Laws?

4. Can an Indian Tribe, (Seminole Tribe of Florida)

defraud the U.S. Government by taking money contrary to the provisions of the False Claims Act, 31 U.S.C. §§ 3729-30 et-seq, then assert absolute immunity from suit by invoking the purported doctrine of Tribal Immunity contrary to the provision of the U.S. Constitution. (Article 3 Clause 2) which states:

> *"the judicial Power shall extend to all Cases, in Law and Equity...-to Controversies to which the United States shall be a Party..."*?

5. Was the lower courts' summary dismissal of the U.S. Government's complaint against the Seminole Tribe of Florida alleging violations of the False Claims Act, 31 U.S.C. §§ 3729-30 et seq, by invoking the Doctrine of Sovereign Immunity contrary to the provisions of the U.S. Constitution, Article 9 which states:

> *"No money . shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time."*?

6.Did the Eleventh District Court commit "Plain Error" when stating (see Page 3 of Appendix, under Analysis)

> *"While the various circuits of the United States Court of Appeals have not yet reached the issue of tribal sovereign immunity when a private citizen has brought a qui tam action against an American Indian tribe under the False Claims Act ..."*

not withstanding the qui tam decision (United States of America, ex rel. Glenn A. Hall, v. Tribal Development Corporation, No. 93-3519. Decided on Rehearing March 9, 1995.) which have held that the Doctrine of Tribal

immunity does not bar such action?

7..Did the Eleventh District Court and the Appellate Court commit Plain Error when not recognizing that the U.S. Government was the Plaintiff in this action and therefore, improperly by the Doctrine of Tribal Immunity, summarily dismiss this action; thereby substantially and severely impairing the right of the U.S. Government to collect damages as a result of the improper and unlawful conduct of the Seminole Tribe of Florida in violation of the False Claims Act ,31 U.S.C. §§ 3729-30 et-seq?

8. Whether the Court's decision to grant immunity related to unaccounted fund, contrary to reporting required by 25 CFR 450c et-seq, is in the Indian population's best interest as that decision allows needed funds to be dissipated without accountability?

PARTIES TO THE PROCEEDINGS

The United States Government with Leon Braun acting as counsel/relator was also the petitioner in the U.S. District Court and the U.S. Court of Appeals, and the Seminole Tribe of Florida, Inc., and the Seminole Tribe of Florida were the respondents.

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CERTIFICATE OF INTERESTED PERSONS

Pursuant to Fed. R. App. P. 36.1 and Eleventh Circuit Rule 26.1-1 the writer hereby certifies that the following persons and corporations have an interest in the outcome of this case.

Billie, James -- Chairman Seminole Tribe of Florida
Braun, Leon-- Relator/counsel for Government.
Clerks Office--U.S. District Court. Miami Fl.
Cypress, Mitchell Pres.--Seminole Tribe of Florida Inc.
Donlan, Maureen---Assistant U. S. Attorney, Miami, Fl.
Jones, Gordon A.--Civil Division -U.S. Dep. of Justice
Kamen & Orlovsky, --Attorneys for Seminole Tribe
Lenard, Joan A. --United States District Judge
Lerner & Pearce, P.A.--Council to Sem. Tribe of Fl. Inc.,
Schultz, Anne, R.--Chief, Appellate Division, U.S. Department of Justice
Seminole Tribe of Florida Hollywood, Fl.
Seminole Tribe of Florida Inc., Hollywood, Fl.
Turnoff, William C. --Magistrate
J. L. Edmondson- Eleventh Circuit Appellate Judge
R. L. Anderson- Eleventh Circuit Appellate Judge
J. F. Dubina- Eleventh Circuit Appellate Judge

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PETITION FOR A WRIT OF MANDAMUS

United States of America, through its undersigned counsel/relator, Leon Braun, respectfully petitions for a Writ of Mandamus to reverse the decision of the Eleventh Circuit District Court dismissing a False Claims Act case against the Seminole Tribe of Florida and the Seminole Tribe of Florida for "Lack of Subject Matter Jurisdiction. The U.S. Board of Appeals for the Eleventh Circuit approved that decision by denying our appeal.

In making this request we will show:

(1) the District Court's action, granting immunity to the Seminole Tribe of Florida when they have allegedly committed Fraud against the Government , is clearly contrary to written law and case histories when related to the False Claims Act and Tribal Immunity;

(2) there has been a fraud perpetuated against the U.S. Government and the petitioner has no other adequate means, such as direct appeal, to obtain relief;

(3) The district court's order raises issues of law of first impression which are in error. and

(4) those actions by Appellate Court reflect oft-repeated errors and manifest persistent disregard of federal rules of sovereign immunity and government rights; and

(5) it is required that this case proceed in order to protect the Constitution and the best interest of all parties, which includes the U.S. Government and the general population of the Seminole Tribe of Florida.

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OPINIONS BELOW

The Eleventh Circuit Federal Court dismissed this case , 98-6580-CIV-LENARD, on Aug. 31, 1999 for Lack of Subject Matter Jurisdiction. (Appendix 1 *infra*)

The opinions stated in that decision were appealed to the United States Court of Appeals for the Eleventh Circuit. Case #99-13678-BB. The "PER CURIAM" decision of the Appellate Court affirmed the lower court's decision with no detailed explanation. (App. 10. *infra*). It is unpublished.

The Petition for Rehearing was also denied "PER CURIAM" and unpublished. (App . 12 *infra*).

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JURISDICTION

The Eleventh District Court of Appeals filed their first decision denying the Governments Appeal on Oct 27, 2000. (App. 10, *infra*). A petition for rehearing was denied Oct. 27, 2000.(App. 12. *Infra).*

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1651(a) and United States Supreme Court Rule 20.3(a), to compel the United States Court of Appeals for the Eleventh Circuit, the Honorable J. L. Edmondson, R. L. Anderson and J. F. Dubina Circuit Judges to reverse their decision and order the District Court to accept "subject matter jurisdiction".

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CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED

The Constitution of The United States, Article III-Section 2, Clause 1, states:

> *the judicial Power shall extend to all Cases, in Law and Equity...-to Controversies to which the United States shall be a Party.* (App. 8, *infra.*)

The United States Constitution , Section 9. States ..

> *No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.*

The False Claims Act, *(31 U.S.C. 3729 - 3733)*, states:

> *any person who knowingly presents, or causes to be presented, to the United States Government a false or fraudulent claim for payment or approval has a liability for that action*

.

Plain error under *(Rule 52(b))* means error both obvious and substantial; the rule should be invoked only where exceptional circumstances make it necessary to avoid a clear miscarriage of justice.

Title 25, 1772a -q defines the Seminole Tribe of Florida as a Tribe organized under section 476 of Title 256 et-seq.

Title 25, Chapter 3, Subchapter II, &81 abrogates sovereign immunity as a defense in an action brought against the Indian Tribe when Federal Law is involved..

BACKGROUND

On June 5,1998, Leon Braun, as the Relator, filed a False Claims Act Suit against the Seminole Tribe of Florida and the Seminole Tribe of Florida, Inc., for the United States Government *(Case 95-6580-CIV LENARD)*. The case was dismissed for "lack of subject matter Jurisdiction." (App. 1 *intra)*

Appeal was made to the Eleventh Circuit Court of Appeals, *(RE 99-13678)* and denied. (App. 10, *intra)*. A second appeal was made and denied. *(*App. 12, *intra)*.

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DISCUSSION OF THE QUESTIONS

1. The District Court erred in assuming this was the first "qui tam" action against Indian Tribes and that issue had never been decided. (App. 3, Analysis, *intra*)

In a Qui tam action brought on behalf of United States, *(U.S.A. ex rel. Glenn A. Hall v. Tribal Development Corporation, Corp.*, No. 93-3519, (1994), the Court held that:

> *(1) United States, rather than parties that brought action on its behalf, was plaintiff for standing purposes, and*
>
> *(2) United States suffered sufficient injury-in-fact for purposes of Article III standing.*
>
> *When the legislative body enacts provisions enabling qui tam actions, that act carries with it understanding that in such suits it is government, and not individual relator, who has suffered injury resulting from violation of underlying law and is therefore real plaintiff in the action.*

It has been established, **The United States of America is the plaintiff, not Leon Braun the Relator.** There is no

immunity when the United States is the Plaintiff. **The Court erred. Case history shows the Federal Courts have jurisdiction in a False Claims Act case.**

2. Whether the Seminole Tribe of Florida can interpose its sovereign immunity over the Supremacy of the United State?
In other words, can the Seminole Tribe of Florida defraud the U.S. Government then claim sovereign immunity?

Constitution of The United States, Article III--The Judiciart.

> *Section 2, Clause 1. Jurisdiction of Courts,:*
> *The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;-;--to Controversies to which the United States shall be a Party;--*

This False Claims Act case is an action by the United States against the Seminole Tribe of Florida and the Seminole Tribe of Florida, Inc. for Fraud. Therefore the United States is a Party (Plaintiff), the Federal Court has jurisdiction. This was established in court.(see *U.S. ex rel. McCarty v. Hollis, C.C.A.10 (Okla.) 1941*, 120 F.2d 540).

> *The jurisdiction of a United States court to entertain a suit by the United States for enforcement... is based on the provision that judicial power of United States shall extend to all controversies to which the United States is a party.*

This False Claims Act case, as all qui-tam actions, is the United States as the plaintiff and therefore judicial power of United States prevails.

Oliphant v. Saquamish Indian Tribe, 35 U.S. 191 (1978) stated that tribal sovereignty is limited in three ways: --- Justice Rehnquist -

> *Tribes are not permitted to exercise powers that are surrendered by treaty; and*
> *Tribes are not permitted to exercise powers that are prohibited by federal statute; and*
> *Tribes are not permitted to exercise powers that are inconsistent with their status of a domestic dependant nation.*

The Seminole Tribe of Florida is a domestic dependant nation defined by 25 CFR 1772a, 476, Chapter 3, Subchapter II, §81.,(page 8,*infra*)wherein they are prohibited by federal statute to claim immunity to Federal violations.

In *Reich v. Mashantucket* the Court of Appeals, McLaughlin, Circuit Judge, held that:

> *(1) inherent tribal sovereign power did not preempt application of federal regulatory scheme that was silent on its application to Indians;*

Other cases, *(U.S. ex rel. Hall v. Tribal Development Corp., C.A.7 (Wis.) 1995,* 49 F.3d 1208, on remand 165 F.R.D. 83), *United States v. Red Lake Band of Chippewa Indians,* 827 F.2d 380, 382 (8th Cir.1987) in essence agreed:

> *It is an inherent implication of the superior power exercised by the United States over the Indian tribes that a tribe may not interpose its sovereign immunity against the United States.*

.

The Seminole Tribe of Florida, when being chartered, agreed to abide by the Constitution and Statutes of the United States.

> *"Constitution of the Sem. Tribe of Florida. Ratified August 21, 1957, Article V. Powers of tribal council--the Tribal Council of the Seminole Tribe of Florida shall exercise the following powers, subject to any limitation imposed by the Constitution or the Statutes of the United States."*

The False Claims Act was in existence when Seminole Tribe of Florida agreed to abide by the statutes of the United States.

There is no Sovereign immunity in this case and the United States may not be refused its right in court to protect its interest..

3. The District Court also stated : *"ambiguities in federal laws must be resolved to the Indians advantage"*.(App. 8, *infra*)

Other parts of this paper shows there are no ambiguities. However, this Court's decision is not to the advantage of the Seminole Tribe of Florida's general population. It is evident that if the money in question was reported properly and shown to be used properly, *(* 25 CFR&450c, App. 15, *infra)* this case would not be in court. If the Seminole Tribe of Florida does not report as required, there is nothing to stop unscrupulous individuals from diverting money required to help those in need.

The financial damage to our country and the injury to the Indians in need will continue endlessly unless there is proper enforcement of the desires of Congress. It is in the Indians best interest that discovery be made, funds recovered and then the funds redistributed properly.

The Court erred in not realizing there was past history showing the Federal Courts have jurisdiction and the Court erred because it is in the Indian general population's best interest to proceed with this case.

4. The Seminole Tribe of Florida's immunity.

The Seminole Tribe of Florida, and The Seminole Tribe of Florida, Inc., are products of Title 25, 1772a-q et-seq.

> *(1) The term "tribe" means the Seminole Tribe of Indians of Florida or Seminole Tribe of Florida, a tribe of American Indians recognized by the United States and organized under section 476 of this title and recognized by the State of Florida pursuant to chapter 285, Florida Statutes, and its successors.*

In 25 U.S.C., Chapter 3, Subchapter II, § 81. Contracts and agreements with Indian tribes

> *(d) The Secretary (or a designee of the Secretary) **shall refuse** to approve an agreement or contract that is covered under subsection (b) if the Secretary (or a designee of the Secretary) determines that the agreement or contract--*
>
> *(1) violates Federal law; or*
>
> *(2) does not include a provision that----*
>
> *(C) includes an express waiver of the right of the Indian tribe to assert sovereign immunity as a defense in an action brought against the Indian tribe (including a waiver that limits the nature of relief that may be provided or the jurisdiction of a court with respect to such an action)....*

From the above (25 U.S.C., Chapter 3, Subchapter II, § 81) Congress has clearly stated the Indians had waived their rights of sovereign immunity as a defense in an action brought against the Indian tribe when they are accused of violating a Federal law. The Seminole Tribe of Florida agreed to that. (Constitution of the Seminole Tribe of Florida, Article 5, page 7, *supra)*

And in accordance with 18 U.S.C. Sec. 3231-

> *" The district courts of the United States shall have original jurisdiction of all offenses against the laws of the United States..."*

Congress did not, and legally could not intend to write Indian Acts allowing them to violate the Constitution, nor give them immunity when they did.
It follows, **the Seminole Tribe has no sovereign immunity in this case and by Federal law, the United States District Court has jurisdiction .**

5. Whether the "Plain Error Doctrine' should be invoked.
Plain Error.

> *"Plain error under Rule 52(b) means error both obvious and substantial; the rule should be invoked only where exceptional circumstances make it necessary to avoid a clear miscarriage of justice. U.S. v. Cormier, C.A.5th, 1981,* 639 F.2d 1177, 1182-1183 *(applying rule to evidentiary error;).*
>
> *To constitute plain error, error must have been so fundamental as to have resulted in a miscarriage of justice;. U.S. v. Lechuga, C.A.5th, 1989,* 888 F.2d 1472, 1480."

Although this case, The U.S. v Seminole Tribe of Florida, was dismissed with no trial, it is suggested that plain error exists because

(1) the record is clear as to the error,
(2) clear and unequivocal rules were violated, and
(3) a substantial right have been denied with material prejudice.

The Eleventh Circuit Court of Appeals was made aware of:(see **PETITION FOR REHEARING,** Appendix 18,

infra)

(A) The Plaintiff was the United States of America.

(1) United States, rather than parties that brought action on its behalf, was plaintiff for standing purposes, and

(2) United States suffered injury-in-fact for purposes of Article III standing.

(B) The Case histories cited were not relevant and the resulting decision violated written law.

(1)The Eleventh Circuit District Court and the Appellate Court knowingly cited cases (Florida Paraplegic. Assoc. v. Miccosukee Tribe of Indians of Fl., 166 F.3d 1126,1131(11th Cir. 1999) & nn.11-12, Florida v. Seminole Tribe, 181 F.3d 1237 (11th Cir. 1999), Kiowa Tribe of Okla. v. Manufacturing Tech.. Inc., 523 U.S. 751, 118 S. Ct. 1700, 1703 (1998), (citations omitted) etc.. that were not relevant because none were a case of the U.S. Government, as a Plaintiff (party), suing the Indians;

(2) Both courts ignored , written law (*supra*), and case history(supra) resulting in both courts violating the sovereign power of the United States. (Supra)

(C)The Seminole Tribe of Florida was bound by 25 CFR 1722, 450c,§ 81. et-seq ., which defined the Seminole Tribe of Florida, set up the rules that the Seminole Tribe of Florida must abide by , and abrogated sovereign immunity when the U.S. Government was a party. The Seminole Tribe of Florida agreed to abide by those rules, and the Seminole Tribe of Florida had agreed to abrogate all immunity in court when violating a Federal law.

(D)The False Claims Act (31 U.S.C. 3729, et-seq)and its

relation to Indians had been tested in the higher Courts (United States of America, ex rel. Glenn A. Hall, v. Tribal Development Corporation, No. 93-3519). This higher Court had ruled the Indians had no immunity in qui-tam (False Claims Act) actions.

It is clear, both the Eleventh Circuit District Court and the Eleventh Circuit Court of Appeals violated the Constitution and Federal laws and in doing so the rights of the United States of America are being violated while the United States has been and will continue to be damaged.

The Plain Error Doctrine appears to be in order.

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7. Conclusion:

A. Because the Decision by the Eleventh Circuit District Court results in a violation of The Constitution, Article II, Section 2 which states the Federal Courts will have jurisdiction to controversies to which the United States shall be a party; and/or

C. Because the decision is in opposition to Article 1 section 9, which states all money drawn from the treasury must be accounted for; and/or

D. Because the decision is contrary to the The False Claims Act (31 U.S.C. 3729, et-seq)which is intended to protect the Government from fraud; and/ or

E. Because the court's decisions is shown to be arbitrary, capricious, an abuse of discretion, contrary to constitutional right and power, and disregard of required statutory jurisdiction, The Plain Error Doctrine should be invoked

For the reasons stated above, The Supreme Court is requested to grant this Petition for Writ of Mandamus to compel the lower courts to reverse their rulings and accept subject matter jurisdiction so this case may proceed.

Submitted this day of January 8, 2001

Leon Braun relator for
The United States of America
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 98-6580-CIV-LENARD

UNITED STATES OF AMERICA,
ex rel LEON BRAUN,

Plaintiff,
vs.

SEMINOLE TRIBE OF FLORIDA, INC.
and SEMINOLE TRIBE OF FLORIDA,
Defendants.

ORDER OF DISMISSAL
FOR LACK OF SUBJECT MATTER JURISDICTION

THIS CAUSE is before the Court upon review of Defendants' motion to dismiss for lack of subject matter jurisdiction, filed March 3, 1999. Having reviewed Defendants' motion and the record, the Court finds as follows.

I. Procedural History

On June 5, 1998, Relator, Leon Braun, brought a qui tam action, under the False Claims Act of 1986 ("FCA"), 31 U.S.C. 3729-30 et seq., against Defendants, Seminole Tribe of Florida, Inc. ("Tribe, Inc.") and Seminole Tribe of Florida ("Seminole Tribe").

Relator claims that Defendant is responsible for the following unlawful actions, which Relator alleges "include but are not limited to":

1. Causing to be presented to an officer or employee of the United States Government a false or fraudulent claim for

payment or approval;
2.Knowingly making or causing to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government;
3.Having possession, custody, or control of public property or money used, or to be used, by the government and, intending to defraud the Government or wilfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt; and
4.Making, using or causing to be made or used, a false record ro statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the Government.

(Compl. at ¶ 16.) Relator contends that 31 U.S.C. 3732 establishes this Court's jurisdiction to review his qui tam action against Defendants. (Compl. at¶ 4.) Having reviewed Relator's once sealed complaint, the Government elected not to intervene on December 3, 1998.

Defendants then filed a motion to dismiss for lack of subject matter jurisdiction on March 3, 1999. Defendants move the Court to dismiss Relator's action against them because
tribal sovereign immunity precludes this Court's jurisdiction. Defendants maintain that they cannot be sued, unless (I) Congress has specifically abrogated tribal sovereign immunity within the FCA, or (2) the Tribal Council has waived Defendants' immunity from suit. In that vein, Defendants argue that Congress has not expressly abrogated tribal sovereign immunity from the ambit of the FCA. Defendants also points to a Seminole Tribe ordinance
stating that tribal sovereign immunity from third-party suits in

state or federal court extends to the tribe, "its subordinate governmental and economic units as well as its tribal officials, employees and authorized agents. . . absent the clear, express and unequivocal consent of the Seminole Tribe of Florida or the clear, express and unequivocal consent of the United States Congress." (Willie Aff. Ex. B. at 4 (Ordinance No. C-01-95 (1995)).) Defendants proffer this ordinance to show that they have not waived tribal sovereign immunity.

On March 17,1999, Relator filed his response to Defendants' motion. Relator states that the FCA does not explicitly immunize tribal groups from being sued under it. Relator adds that the Major Crimes Act expressly states, "the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except of the District of Columbia, shall extend to the Indian country."

Major Crimes Act, 18 U.S.C. 1152 (emphasis added). Relator deduces from this congressional mandate that he can sue Defendants in federal court under the FCA because they violated the Major Crimes Act. Relator maintains that the issue of a tribal waiver of sovereign immunity is irrelevant because Defendants are not immune under the Major Crimes Act.

On March 24, 1999, Defendants filed their reply in support of their Motion to Dismiss.

II. Analysis

While the various circuits of the United States Court of Appeals have not yet reached the issue of tribal sovereign immunity when a private citizen has brought a qui tam action

against an American Indian tribe under the False Claims Act ("FCA"), 31 U.S.C. 3729 et seq. (1986), they have recently reviewed the issue of whether states are immune from qui tam

actions. The circuits are split on this issue. Compare United States ex rel. Zissler v. Regents of the Univ. of Minn., 1 54 F.3d 870 (8th Cir. 1998) (holding that states are "persons" subject to liability under False Claims Act); and United States ex rel. Stevens V. Vt. Agency of Natural Resources, 162 F.3d 195 (2d Cir. 1998); with United States ex rel. Long v. SCS Business & Tech. Inst. Inc., 1999 WL 178713 (D.C.Cir. 1999) (holding that "person" who may be liable under FCA does not include states); and United States v. Texas Tech Univ., 171 F.3d 279 (5th Cir. 1999) (ruling that states are not liable under FCA, where United States
government does not intervene). But, the Supreme Court barred the courts from drawing binding parallels between state sovereign immunity and tribal sovereign immunity. See Kiowa Tribe of Okla. v. Manufacturing Tech.. Inc., 523 U.S. 751, 118 S. Ct. 1700, 1703 (1998) [hereinafter Kiowa Tribe] (citation omitted) ("the immunity possessed by Indian tribes is not coextensive with that of the States"). In Blatchford v. Native Village of Noatak, 501 U.S. 775(1991), the Supreme Court "distinguished state sovereign immunity from tribal
sovereign immunity, as tribes were not at the Constitutional Convention. They were thus not parties to the 'mutuality of... concession' that 'makes the States' surrender of immunity from suit by sister States plausible."Kiowa Tribe, 118 5. Ct. at 1703, quoting Blatchford, 501 U.S. at 782; but see Florida Paraplegic. Assoc. v. Miccosukee Tribe of Indians of Fl., 166
F.3d 1126,1131(11th Cir. 1999) & nn.11-I2(citations omitted) (extending principles of state sovereign immunity doctrine to determination of tribal sovereign immunity). Therefore, the Court need not resolve the foregoing disagreement among the federal circuits regarding state sovereign immunity under the FCA and its application to the instant matter. The Supreme Court has ruled that tribal sovereign immunity is not absolute. However, Congress is in the best position to limit this doctrine. See Kiowa Tribe, 118 5. Ct. at 1705 (declining to confine tribal

sovereign immunity "to reservations or to noncommercial activities"). In Kiowa Tribe, a payee brought a commercial suit against an American Indian tribe, in Oklahoma state court. See id. at 1703. The payee argued that tribes are not immune from commercial suits arising out of commercial conduct that occurred off the tribe's reservation. See id. However, the Kiowa Tribe Court disagreed. It ruled that the Court could not abrogate tribal sovereign immunity, where Congress had not already done so. See id. at 1705. Since Congress had not eliminated American Indian tribes immunity from commercial suits in state court, the Kiowa Tribe Court found that the tribe was immune from the payee's suit in state court. See id.

Congress has abrogated tribal sovereign immunity in the past. See id., citing 25 U.S.C. 450f(c)(3) (mandatory liability insurance) & 271 0(d)(7)(A)(ii) (gaming activities). Yet, "in other statutes, [Congress] has declared an intention not to alter [tribal sovereign immunity]." See Kiowa Tribe, 118 5. Ct. at 1705, citing 25 U.S.C. 450n (stating that nothing in financial-assistance program is to be construed as "affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian tribe"); Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Okla., 498 U.S. 505,510 (1991) [hereinafter Potawatomi Tribe] (discussing Indian Financing Act of 1974, 25 U.S.C. 1451 et seq. (1974)).

In order for tribal sovereign immunity to be abrogated, Congress must "unequivocally express" its intent to abrogate. Santa Clara Pueblo v. Martinez, 436 U.S. 49, 58 (1978); see Kiowa Tribe, 118 5. Ct. at 1702. Congressional elimination of tribal sovereign immunity from a piece of legislation "cannot be implied but must be unequivocally expressed." Martinez, 436 U.S. at 58-59; accord Florida Paraplegic Assoc. v. Miccosukee Tribe of Indians of Fl., 166 F.3d 1126, 1131(11th Cir. 1999).

In holding that tribes were immune from private suit under the Americans with Disabilities Act ("ADA"), 42 U.S.C. 12181 et seq., the Eleventh Circuit found:

In this broader context of sovereign immunity, the Court has held that Congress may abrogate a sovereign's immunity. "only by making its intention unmistakably clear in the language of the statute"; legislative history and "inferences from general statutory language" are insufficient [citation omitted]. We see no reason to adopt a different standard for evaluating Congressional intent with respect to the waiver of tribal sovereign immunity.

Florida Paraplegic. 166 F.3d at 1131(11th cir. 1999) (quoting Atascadero St. Hosp. v. Scanlon, 473 U.S. 234, 242 (1985)).

The Eleventh Circuit continued:

Although the Supreme Court has continued to emphasize, in cases such as Potawatomi Tribe and Kiowa Tribe, the rule that Congress must unequivocally express its intent to abrogate tribal sovereign immunity, the Court decided the landmark cases setting down this standard--USF&G and Martinez--in 1940 and 1978, respectively. Congress therefore had notice of the need to express its intent clearly when it enacted the ADA in 1990.

Florida Paraplegic,166 F.3d at 1131 n 12. By extension, Congress had notice of the need to express its intent to abrogate tribal sovereign immunity clearly, when it enacted the FCA. Nevertheless, nowhere in the FCA or in its legislative history does Congress declare an intention to abrogate tribal sovereign immunity, so that private citizens may bring qui tam actions against American Indian tribes, under the FCA. In fact, American Indian tribes and their members are mentioned nowhere within the FCA and its legislative history.

Though courts have employed rules of statutory construction to find states liable under the FCA, the same rules reveal no unequivocally expressed intent on the part of Congress to abrogate tribal sovereign immunity in FCA qui tam actions. Using the rule of statutory construction that identical words

used in different parts of the same act are intended to have the same meaning," the Zissler court found that "states" are "persons" subject to liability under the FCA. Zissler, 154 F.3 d at 875 (quoting Comm'r of Internal Revenue v. Lundy, 516 U.S. 235, 250 (1996) (citations omitted)). The Zissler court deduced that states can be sued as persons, under the FCA, from 31 U.S.C. 3733(l)(4)'s inclusion of states in its definition of persons who can enforce the FCA. However, 31 U.S.C. 3733(l)(4) does not include American Indian tribes in its definition of persons who can enforce the FCA.

Further, that tribes have successfully brought qui tam actions against other parties does not mean that tribes are liable as "persons" under the FCA. Courts have been hesitant to allow Indians to initiate qui tam actions, but have ultimately permitted such actions not because tribes are "persons," but rather on the theory that the FCA has "assigned" the government's injury to the Indian relator. See United States ex rel. Mosav v. Buffalo Bros. Management. Inc., 20 F.3d 739, 742 (7th Cir. 1994); United States ex rel. Stiliwell v. Hughes Helicopter. Inc.<-#>, 714 F.Supp. 1084, 1098 (C.D.Cal. 1989); Thomas R. Lee, Comment, The Standing of Qui Tam Relators under the False Claims Act, 57 U. Chi. L. Rev. 543,562 (1990). Finally, courts have long interpreted ambiguities within a statute to protect American Indian rights. See United States V. Nice , 241 U.S. 591,599 (1916) ("According to a familiar rule, legislation affecting the Indians is to be construed in their interest, and a purpose to make a radical departure is not lightly to be inferred."); Worcester v. Georgia, 31 U.S. 515, 6 Pet. 515, 582 (1832) (McLean, J., concurring) ("The language used in treaties with the Indians should never be construed to their prejudice "), White Mountain ApacheTribe v. Bracker, 448 U.S. 136, 143-44 (1980) ("Ambiguities in federal law have been construed generously in order to comport with . . . traditional notions of

sovereignty and with the federal policy of encouraging tribal independence."). Today, the Eleventh Circuit continues upon this deferential path. See Florida Paraplegic, 166 F.3d at 1131 (citations omitted) (stating that "because of the 'unique trust relationship between the United States and the Indians,' where Indian rights are at issue, **ambiguities in federal laws must be resolved to the Indians' advantage**"). The Court therefore finds that Congress did not expressly abrogate tribal sovereign immunity within the FCA.[1]

III. Conclusion

Without a clear intent to waive tribal sovereign immunity either by Congress in the FCA or by Defendants themselves, the Court lacks subject matter jurisdiction to hear this matter.

It is therefore **ORDERED AND ADJUDGED** that:

1. Defendant's motion to dismiss for lack of subject matter jurisdiction, filed March 3, 1999, is GRANTED.

2. This case is DISMISSED for lack of subject matter jurisdiction.

3. This case is CLOSED. All pending motions not otherwise ruled upon by separate order are DENIED as moot.

DONE AND ORDERED in Chambers at Miami, Florida, this 31 day of August, 1999.

JOAN A. LENARD
UNITED STATES DISTRICT JUDGE

CC: Allan M Lerner Esq Donald A Orlovsky,. Esq

Lerner & Pierce, P.A.
2888 East Oakland Park Boulevard
Fort Lauderdale, Florida 33306

Kamen & Orluvaky, PA
Service Centre South, Suite 402
1601 Belvedere Road
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[1] Though the Major Crimes Act does extend to American Indians, the act creates no private right of action. Private citizens may prosecute violations of the act only through the legal vehicle of the FCA. Without the FCA, the Major Crimes Act is a purely criminal statute. For purposes of tribal sovereign immunity in civil actions, therefore, only a discussion of the FCA is relevant.

[DO NOT PUBLISH]
IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 99 -13678
Non-Argument Calendar

LEON BRAUN, ex rel., United States of America,

Plaintiff-Appellant,

versus

SEMINOLE TRIBE OF FLORIDA, INC., SEMINOLE TRIBE OF FLORIDA,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida

(August 21, 2000)

Before ANDERSON, Chief Judge, EDMONDSON and DUBINA, Circuit Judges

PER CURIAM:

Leon Braun appeals pro se the district court's dismissal of his claim against the Seminole Tribe of Florida, Inc., chartered in 1957, and the Seminole Tribe of Florida, under the False Claims Act, 31 U.S.C. && 3729-33. Given the lack of a pertinent, unequivocal, and expressed waiver of tribal immunity, the district court did not err in dismissing Braun' s complaint for want of subject matter jurisdiction, based upon the doctrine of tribal sovereign immunity. generally, Florida v. Seminole Tribe, 181 F.3d 1237 (11th Cir. 1999),Florida Paraplegic Ass'n v, Miccosukee Tribe of Indians, 166 F.3d 1126 (11th Cir. 1999), and Maryland Casualty Co. v. Citizens Natal Bank, 361 F.2d 517, 520-21 (Th Cir. 1966).

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 99-13678-BB

LEON BRAUN, ex rel., United States of America,

Plaintiff-Appellant

versus

SEMINOLE TRIBE OF FLORIDA, INC., SEMINOLE TRIBE OF FLORIDA,

Defendants-Appellees.

On Appeal from the United States District Court for the Southern District of Florida

---

BEFORE: ANDERSON, Chief Judge, EDMONDSON and DUBINA, Circuit Judges:

PER CURIAM:

The petition(s) for rehearing filed by the Appellant, Leon Braun, is DENIED.

ENTERED FOR THE COURT:
(Signed J.L Edmondson)
UNITED STATES CIRCUIT JUDGE

False Claims Act, 31 U.S.C. 3729 - 3733

Sec. 3729. False claims

(a) Liability for Certain Acts. - Any person who -

(1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States a false or fraudulent claim for payment or approval;

(2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government;

(3) conspires to defraud the Government by getting a false or fraudulent claim allowed or paid;

(4) has possession, custody, or control of property or money used, or to be used, by the Government and, intending to defraud the Government or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;

(5) authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(6) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge the property; or

(7) knowingly makes, uses, or causes to be

made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government, is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, plus 3 times the amount of damages which the Government sustains because of the act of that person, ...

Title 25 & 450c. Reporting and audit requirements for recipients of Federal financial assistance.

* (a) Maintenance of records

o (1) Each recipient of Federal financial assistance under this Act shall keep such records as the appropriate Secretary shall prescribe by regulation promulgated under sections 552 and 553 of title 5, including records which fully disclose -

+ (A) the amount and disposition by such recipient of the proceeds of such assistance,

+ (B) the cost of the project or undertaking in connection with which such assistance is given or used,

+ (C) the amount of that portion of the cost of the project or undertaking supplied by other sources, and

+ (D) such other information as will facilitate an effective audit.

o (2) For the purposes of this subsection, such records for a mature contract shall consist of quarterly financial statements for the purpose of accounting for Federal funds, the annual single-agency audit required by chapter 75 of title 31 and a brief annual program report.

* (b) Access to books, documents, papers, and records for audit and examination by Comptroller General, etc.

The Comptroller General and the appropriate Secretary, or any of their duly authorized representatives, shall, until the expiration of three years after completion of the project or undertaking referred to in the preceding subsection of this section, have access (for the purpose of audit and examination) to any books, documents, papers, and records of such recipients which in the opinion of the Comptroller General or the appropriate Secretary may be related or pertinent to the grants, contracts, subcontracts, subgrants, or other arrangements referred to in the

preceding subsection.

* (c) Availability by recipient of required reports and information to Indian people served or represented Each recipient of Federal financial assistance referred to in subsection (a) of this section shall make such reports and information available to the Indian people served or represented by such recipient as and in a manner determined to be adequate by the appropriate Secretary.

* (d) Repayment to Treasury by recipient of unexpended or unused funds

Except as provided in section 13a or 450j-1(a)(3) of this title, funds paid to a financial assistance recipient referred to in subsection (a) of this section and not expended or used for the purposes for which paid shall be repaid to the Treasury of the United States through the respective Secretary.

CONSTITUTION OF THE UNITED STATES
ARTICLE III--THE JUDICIARY
Section 2, Clause 1. Jurisdiction of Courts

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States;--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

The following, in order to save space, consists of excerpts from :

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

United States of America, ex rel., Leon Braun,	**RE 99-13678 Case No. 98-6580-CIV-LENARD**
Plaintiff	**Magistrate Stephen T. Brown**
vs.	
Seminole Tribe of Florida Inc., and Seminole Tribe of Florida Defendants	

PETITION FOR REHEARING

Dated Sept. 15, 2000

SUBMITTED ON BEHALF OF APPELLANT
Leon Braun
3150 N. 36th St
Hollywood, Fl. 33021
(954) 963- 4949

STATEMENT OF THE ISSUES

The Seminole Tribe of Florida and Tribe, Inc. take the position that they can not be sued unless (1) Congress has specifically abrogated tribal sovereign immunity within the FCA; or (2) the immunity of the tribal defendants from suit have been waived through the deliberate acts of their respective governing bodies, sitting in legal session.[1]

The Eleventh Circuit District Court took the position "because the 'unique trust relationship between the United States and the Indians,' where the Indian rights are at issue, ambiguities in federal laws must be resolved to the Indians' advantage". The Court therefore finds that Congress did not expressly abrogate tribal sovereign immunity within the FCA.'...Without a clear intent to waive tribal sovereign immunity either by Congress in the FCA or by Defendants themselves, the Court lacks subject matter jurisdiction to hear this matter. ([2])

The District court cites Florida Paraplegic to support their argument.

The Eleventh Circuit Appellate Court simply states: "Given the lack of pertinent, unequivocal, and expressed waiver of tribal immunity, the district court did not err in dismissing Braun's complaint for want of subject matter jurisdiction, based upon the doctrine of sovereign immunity.

The Appellate court then cites "Florida v. Seminole Tribe, 181 F.3d 1237, Miccosukee Tribe of Indian, 166 F.3d 1126 and Maryland Casualty Co. V. Citizens Nat'l Bank.[3]

****

[1] Taken from page 7-Answer Brief of Appellee), [2] Taken from pages 8 and 9 of the Dismissal by Joan A. Lenard, U.S.

District Judge., [3] Taken from August 2,2000 decision, page 2

****

Braun, for the U.S. Government takes, exception to all of the above positions.

This petition for a rehearing will:

1. Discuss the "doctrine of tribal sovereign immunity" and show where it is founded upon an anachronistic fiction that has capriciously been used, contrary to existing laws, violating common sense and our Constitution. We will also point out that each situation must be tested before tribal sovereign immunity can be accepted.

2. Discuss the various court referenced decisions in the Appeal Court's denial of our appeal. We will highlight those areas where the court made conclusions based on assumptions which are in opposition to the facts and law available at that time, or have been proven wrong. We will show where the cases themselves are not relevant to this FCA case because the Constitution, existing law, and last but not least, common sense forbids it.

3. Discuss the False Claims Act case by itself to show there is no ambiguity, no immunity, and the intent of the law is clear.

4 Conclude by listing the errors made in the past decisions and state why the decision to dismiss for subject matter jurisdiction was in error, and request the Appellate court order the Federal Court accept their responsibility and try this case.

****

(Taken from page 11 or reappeal)

It follows that whatever immunity is granted to the Indian tribes, Congress, not the Courts, has the responsibility to decide. The Court's function is to follow the existing law.

From *Court v. Ash, 422 U.S. 66, 95 S. Ct. 2080, 45 L. Ed. 2d 26 (1975),*

> *The governing rule was announced by Mr. Chief Justice Marshall in United States v. Schooner Peggy, 1 Cranch 103, 110 (1801):*
> *" It is in the general true that the province of an appellate court is only to enquire whether a judgement when rendered was erroneous or not, but if subsequent to the judgement and before the decision of the Appellate court, a law intervenes and positively changes the rule which governs, the law must be obeyed, or its obligation denied. If the law be constitutional, I know of no court which can contest its obligation...in such a case the court must decide according to existing laws, and if it be necessary to set aside a judgement, violation of law, the judgement must be set aside."*

****

(Taken from Page 20 or Reappeal)

There is not enough allowed space to quote all of CFR Title 25 which is very specific as to how to integrate the Indians into the American economy; controlling the budgeted funds; without violating non Indians, etc. . Unfortunately, too many situations arose wherein the courts, with misguided good intentions, ignored the Title 25 guide lines and gave blanket, capricious immunity to the Tribe. These rulings violated the non Indians and as a result, the growing tendency of non-Indians is to avoid doing business with the Indians, because the courts are not giving normal safeguards. Even the American banking society has a reluctancy to give loans to Indians when there are no safeguards. As a consequence, the press reports, the Indians are

forming their own bank. The same press reports state the new Indian Bank is for funding their own larger businesses, not to aid the individuals.

It is time the courts realize it is in the "best interest of the Indians' to instill a sense of values with the Indians that is in concert with the rest of this nation. If a financial wrong is done by an Indian to Indian or non Indian the guilty party should be held responsible in the same manner as all U.S. Citizens are. If that is done, in time, there will develop a confidence factor when doing business with Indians as in contrast to the high degree of distrust that the courts have encouraged with their decisions. It should also be understood, that Title 25 has funding and insurance available to the Indians so it would not be necessary to violate the non Indians or even Indians.

The courts' decisions, in the past, has added fuel to a modern anti-Indian movement which was created out of a non- Indian "backlash" against Indians since the 1960's. One major factor motivating the anti-Indian groups is the call for "equal rights for whites." .

****

(Taken from page 24 or Reappeal)

2. U.S. Government v. Seminole Tribe of Florida:

2.1 Change of Venue:

It is respectfully submitted, if allowed by the Appellate Court system, that the 11th District Appellate Court allow another Appellate Court review this appeal. We request this for the following reasons.

2.1.1. The 11th Circuit Appellate court denied our appeal without any response as to the reasons we stated in our appeal. Thus we have no way of knowing wherein our arguments are not acceptable.

2.1.2. The 11th Circuit Appellate court cited its own previous decisions. Other courts did not find the 11th Circuit Appellate courts decisions acceptable. We do not find those cited cases acceptable or germane. Details are discussed later in this presentation.
2.1.3. The 11th Circuit Appellate court developed it's own "right without remedy " posture to establish "sovereign immunity" for the Seminoles and Miccosukee. The "right without remedy " posture was also found to be in error. This is also elaborated on later in this presentation.

Because the 11th Circuit Appellate court repeatedly expresses their own pre-disposed attitude in "pattern and practice" related to sovereign immunity, and the 11th Circuit Appellate court would have to reverse their own rulings on past cases as related to immunity, or as a minimum reverse their expressed blanket philosophy of sovereign immunity, we question the possibility of an impartial ruling.
If a change of venue is not permitted, we beg the court accept the following on its merit.
****
(taken from page 26 of Reappeal)
2.4 Detailed discussion of the Florida Paraplegic v. Miccosukee and Florida V. Seminole Tribe are in section 3 and 4 of this paper.
It is shown (see section 3 Florida Paraplegic v. Miccosukee) that the 11th Circuit Court of Appeals' underlying reasons which were developed to grant Sovereign immunity were not in accordance with known facts or law at that time or since come to light. Braun cited cases (see section 3) from many other State's courts that were in opposition to the 11th District

Appellate ruling on identical situations. It was recommend that the 11th District Appellate Court reverse themselves. (see 3.5)
Similar arguments were presented for the Florida v. Seminole with the same recommendation to reverse themselves. (see section 4.)
Whether or not the 11th Circuit Court of Appeals reverses themselves, those cases have no relevance to this FCA case when related to immunity because this FCA case is a violation of our Constitution and Fraud against our Government. Those ingredients are not in the Paraplegic or Florida or Maryland case.
****
(taken from Page 27 Reappeal)
2.5 Discussion of the 11th District Courts ruling on the FCA case.
2.5.1 The 11th District Courts decision was based on "ambiguities in federal laws must be resolved to the Indians' advantage". This is a well intended phrase but not applicable for two major reasons. Firstly, there was no ambiguity (see 2.3.1); and secondly, it is not in the Indians best interest.
It is not in the Indians best interest because the very premise of this False Claims Act case is to account for the money which did not get to help the Indians. In other words, if the Seminole Tribe of Florida's way of life has not improved over the years, (this is published opinion.)where did the money go? It is the money that has been misdirected that is under question. Obviously it is in the "Indians Best Interest" to put the misdirected money back where it belongs. For example, what if certain individuals were taking the money for their own personal gains? This will all be brought to light and detailed after discovery. It is definitely to the

Indian's advantage to follow the guide lines set forth in CFR Title 25.

The word "ambiguity" as used related to "sovereign immunity" implies there may or may not be immunity. There are established tests such as the "three circumstances" rule (G) which will determine whether *(1) the case will abrogate rights guaranteed under a treaty, or (2) interfere with purely intramural matters touching exclusive rights of self government, or (3) contradict Congress intent.*

It is apparent there is no immunity to be granted when using these tests.

Justice Rehnquist ©) stated tribal sovereignty is limited in three ways:

> *Tribes are not permitted to exercise powers that are surrendered by treaty; and*
> *Tribes are not permitted to exercise powers that are prohibited by federal statute; and*
> *Tribes are not permitted to exercise powers that are inconsistent with their status of a domestic dependant nation.*

It is apparent there is no immunity to be granted when using these tests.

****

(Taken from page 27 reappeal)

2.5 Discussion of the 11th District Courts ruling on the FCA case.

2.5.1 The 11th District Courts decision was based on *"ambiguities in federal laws must be resolved to the Indians' advantage"*. This is a well intended phrase but not applicable for two major reasons. Firstly, there was no ambiguity (see 2.3.1); and secondly, it is not in the Indians best interest.

It is not in the Indians best interest because the very

premise of this False Claims Act case is to account for the money which did not get to help the Indians. In other words, if the Seminole Tribe of Florida's way of life has not improved over the years, (this is published opinion.)where did the money go? It is the money that has been misdirected that is under question. Obviously it is in the "Indians Best Interest" to put the misdirected money back where it belongs. For example, what if certain individuals were taking the money for their own personal gains? This will all be brought to light and detailed after discovery. It is definitely to the Indian's advantage to follow the guide lines set forth in CFR Title 25.

The word "ambiguity" as used related to "sovereign immunity" implies there may or may not be immunity. There are established tests such as the "three circumstances" rule (G) which will determine whether (1) the case will abrogate rights guaranteed under a treaty, or (2) interfere with purely intramural matters touching exclusive rights of self government, or (3) contradict Congress intent. It is apparent there is no immunity to be granted when using these tests.

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> *Tribes are not permitted to exercise powers that are inconsistent with their status of a domestic dependant nation.*

It is apparent there is no immunity to be granted when using these tests.

2.6 Then on what basis do we grant immunity?

The 11th Circuit Court of Appeals ruling states *" Given the lack of pertinent, unequivocal, and expressed waver of tribal immunity"* is a reason to grant immunity. Yet the same 11th Circuit Court of Appeals, on page 8 of the Paraplegic V. Miccosukee, stated:

> *(21). See also United States v. Red Lake Band of Chippewa Indians, 827 F.2d 380, 382 (8th Cir.1987) ("[It is an inherent implication of the superior power exercised by the United States over the Indian tribes that a tribe may not interpose its sovereign immunity against the United States."*

This FCA suit is the U.S. Government suing an Indian Tribe. According to 11th Circuit Court of Appeals the Seminoles may not interpose its sovereign immunity against the United States.

2.7 The 11th Circuit Court of Appeals stated when discussing Tribal Sovereign Immunity on page 4 of the Paraplegic V. Miccosukee

> *.....Thus, the Supreme Court has allowed the federal government to enforce with respect to Indians laws concerning, for example, federal income taxes and confiscation of land for federal projects, on the rationale, discussed supra Part III.A, that Congress meant the laws under which the federal agencies were acting to apply to Indians because they were "general statutes in terms applying to all persons" that did not explicitly exclude Indians.(9) Tuscarora, 362 U.S. at 116, 80 S.Ct. at 553. (accent added)*

The 11th Circuit Court of Appeals in the above statement acknowledges that there are statutes that apply to "all" and do not exclude Indians. The False Claims Act is such a statute and includes everybody. Even the States, when tested by the Supreme Court, are

not immune. There is no specific type of defendant and no exceptions..

> *It follows the approach of United States v. Douglas, 626 F.9 Supp. 621 (E.D. Va. 1985), which broadly reads the FCA as intended "to reach all types of fraud that result in immediate financial loss to the government."* (accent added)

2.8 The 11th Circuit Court of Appeals stated when discussing Tribal Sovereign Immunity of the Paraplegic V. Miccosukee

> *(6). As we held in Part III.A, supra, Title III applies to Indian tribes; moreover, "[tribal sovereign immunity does not bar suits by the United States." Reich v. Mashantucket Sand & Gravel, 95 F.3d 174, 182 (2d Cir.1996) (citing Quileute Indian Tribe v. Babbitt, 18 F.3d 1456, 1459-60 (9th Cir.1994) (observing that "tribal sovereignty does not extend to prevent the federal government from exercising its superior sovereign powers").* (accent added)

There is no doubt the 11th Circuit Court of Appeals recognizes the right of the Government to exercise its sovereign powers. We repeat, this is the U.S. Government suing the Seminole Tribe of Florida and Inc., all of whom are designated Indians.

****

(Taken from Page of Reappeal)

2.9 The United States Constitution , Section 9. (See M) Our Constitution demands that all moneys be accounted for. If the Courts decide that the Indians do not have to account for the moneys taken from our treasury, it would be a violation of our Constitution. To dismiss this case will allow those guilty ones to confiscate moneys meant for better purposes. This

could go on endlessly depriving those in need, until the Supreme Court reverses. But the damage done in the time it takes for such a reversal is in itself a crime against the people.

2.10 Summation:

2.10.1 The Government did abrogate the Seminole Tribe of Florida's immunity relating to the Constitution, Federal and State laws when granting them their charter. (See J, 1.8, 2.3.1)

2.10.2 The Seminole Tribe of Florida did waive immunity to all Federal and State laws when submitting their signed Constitution in order to be approved. (See J, 1.8. 2.3.1)

2.10.3 There is no ambiguity in law or intent. Congress has designated 25 CFR just for Indians. Congress made it very clear as to what rules pertain to the Indians.

2.10.4 It is to the advantage of the Indian general population that 25 CFR be adhered to.

This FCA case would assure the Indian population would be protected as an outcome of discovery. (See 2.5.1)

2.10.5 This FCA case will assure the intent of the Constitution, related to money, is carried out. (See 2.9, M)

2.10.6 The superior power of the United States over the Indian tribes is such that a tribe may not interpose its sovereign immunity against the United States.(See 2.6,2.7)

2.11 Conclusion;

It is respectfully submitted, in accordance with Plain Error Doctrine (see D), **that the 11th Circuit Court of Appeals reverse their previous decision and direct the**

District Court to continue.
Submitted on this Sept. 15, 2000

Leon Braun, Realtor/Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I caused copies of the foregoing to be served by first class mail, postage prepaid, to the following:

_____

Leon Braun
Relator for the U.S. Government
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December 15, 2000

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Honorable Judge J. L. Edmondson-
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Honorable Judge R. L. Anderson
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Honorable Judge J. F. Dubina
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